

ANCHORAGE DAILY NEWS:

Shield law

Free flow of information requires federal protection

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The First Amendment to the Constitution makes it plain that Congress shall make no law abridging the freedom of speech or of the press.

Right now Congress needs to make a law to stop efforts to diminish freedom of the press.

At issue is the proposed Free Flow of Information Act now pending in the Senate. The bill would protect journalists in all facets of the trade, including bloggers, from being forced to reveal confidential sources and documents.

In simple terms, it means that journalists who gather and publish vital public information based on promises of anonymity to sources may keep those promises without being subject to prosecution and jail.

Forty-nine states -- including Alaska -- offer some measure of protection to journalists now, either through shield laws or court rulings. That body of law grants journalists a privilege of keeping sources confidential without fear of government reprisal.

But in recent years federal agencies, prosecutors and other litigants have become much more aggressive in pursuing the identity of journalists' confidential sources.

The National Press Photographers Association points out the case of Joshua Wolf, a freelance photographer in California, who spent 226 days in jail -- longer than any other journalist in U.S. history -- for his refusal to turn over raw video of an incident involving San Francisco police. California's shield law would have protected him, but prosecutors brought the case in federal court.

Good journalists prefer named sources. They want people speaking on the record. Good news organizations operating in any medium are reluctant to use unnamed sources without strong, public-interest reasons for doing so.

But sometimes, that's the only way to get the story.

What's at stake? Examples of stories that relied on anonymous sources include Watergate, the Enron scandal and conditions at Walter Reed Army Medical Center. If reporters can't make a promise of confidentiality stick, the free flow of information dries up, whistleblowers go silent, lies go unchallenged and people suffer.

The value of shield laws is not that journalists get to tell the stories they want to tell. The value of shield laws is that Americans get to hear the stories they need to hear.

The U.S. House overwhelmingly approved its version of the Free Flow of Information Act in October. Alaska Rep. Don Young was one of 398 members who voted for it. Just 21 were opposed.

A Senate version could be up for a vote this week. Alaska Sen. Lisa Murkowski is waiting to see what amendments the bill's sponsor, Sen. Arlen Specter, wants to introduce before she makes a call. Sen. Ted Stevens also is waiting for the final draft before deciding on his vote.

Both should support something akin to what the House passed in October.

That version:

- Protects the privilege of confidentiality and puts the burden of proof on the government or any other party seeking disclosure to show the public interest in compelling disclosure outweighs the public interest of gathering and publishing information.
- Requires the government to exhaust every other reasonable means of finding the information before confronting a journalist.
- Narrows the scope of what the government can seek only to what's demonstrably relevant to the government's case. No fishing expeditions or legal cover for rifling reporter's notes or a videographer's files.
- Provides common-sense exceptions to the shield if revealing sources will protect the nation or its allies from a terrorist attack or other significant harm, will prevent the death, kidnapping or substantial harm to an individual, or is necessary to identify a person who has disclosed trade secrets, individual health or consumer information already protected by law.

It's not a blank check for journalists. It's good law for a representative democracy.

BOTTOM LINE: Federal shield law will help protect a free press.